



NUMBER 13-17-00107-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JIMMY DON WRIGHT,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 36th District Court
of Aransas County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Contreras and Benavides
Memorandum Opinion by Chief Justice Valdez

Appellant Jimmy Don Wright appeals his conviction of evading arrest or detention, a state jail felony. Appellant received a two-year sentence of confinement.¹ See TEX.

¹ The offense of evading arrest, usually a Class A misdemeanor, is punishable as a state jail felony if the actor has been previously convicted of the same offense. See TEX. PENAL CODE ANN. § 38.04(b), (b)(1)(A) (West, Westlaw through 2017 1st C.S.).

PENAL CODE ANN. § 38.04 (West, Westlaw through 2017 1st C.S.). By one issue, appellant contends that the evidence is insufficient to support the conviction for evading arrest and that instead the evidence merely shows that he committed misdemeanor resisting arrest. See *id.* § 38.03 (West, Westlaw through 2017 1st C.S.) (“A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another.”). We affirm.

I. BACKGROUND

A Rockport, Texas police officer initiated a traffic stop after observing that appellant's vehicle had defective equipment constituting a traffic violation. Appellant had an outstanding warrant. The arresting officer, Michael Cramer, testified that when he attempted to place appellant in handcuffs, appellant “fled” and ran “about 30 feet or so”; Officer Cramer “grabbed” his shirt. Officer Cramer explained that a person commits the offense of evading arrest “[i]f they run away from you” and that appellant did so in this case. A video admitted into evidence taken by Officer Cramer's dashboard camera shows that when Officer Cramer began placing handcuffs on appellant, appellant ran at a fast pace away from Officer Cramer. Officer Cramer prevented appellant's escape by reaching out and grabbing appellant's shirt. Video taken by a body camera on another officer shows a different angle of the incident. Again, this video shows appellant running away and both officers running after appellant for about twenty to thirty feet. The jury convicted appellant of evading arrest or detention, and this appeal followed.

II. STANDARD OF REVIEW AND APPLICABLE LAW

In a sufficiency review, we examine the evidence in the light most favorable to the prosecution to determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see *Brooks v. State*, 323 S.W.3d 893, 898–99 (Tex. Crim. App. 2010) (plurality opinion). The fact finder is the exclusive judge of the facts, the credibility of witnesses, and the weight to be given their testimony. *Brooks*, 323 S.W.3d at 899. We resolve any evidentiary inconsistencies in favor of the judgment. *Id.*

The legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Coleman v. State*, 131 S.W.3d 303, 314 (Tex. App.—Corpus Christi 2004, pet. ref'd) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). Appellant committed the offense of evading arrest if he intentionally fled from a person that he knew was a peace officer attempting to lawfully arrest him. See TEX. PENAL CODE ANN. § 38.04.

III. DISCUSSION

By his sole issue, appellant contends that the evidence is insufficient to support his conviction for evading arrest or detention because the evidence only shows that he committed the offense of resisting arrest. Specifically, appellant argues that the evidence is insufficient to show that he fled from the officers. We disagree.

The jury saw a video of appellant running away from Officer Cramer. Officer Cramer testified that appellant “took off running” and described appellant’s acts of running as “fleeing.” In addition, appellant admitted that he “tried to get away from the officer.” “Fleeing” is “anything less than prompt compliance with an officer’s direction to stop.” *Horne v. State*, 228 S.W.3d 442, 446 (Tex. App.—Texarkana 2007, no pet.). On cross-

examination by appellant's trial counsel, Officer Cramer stated that "[t]here was a point in time where [appellant's] shirt did rip from my hands"; therefore, Officer Cramer did not have a hold of appellant's shirt the entire time of the scuffle. Officer Cramer explained "I tried sweeping his legs out from under him to get him to the ground and that was unsuccessful. His shirt ripped and just right about this point or right after, he broke free." In addition, when asked by the State, "But did he flee," Alex Leal, the other officer present during the incident, replied, "He did flee."

Appellant argues that he did not flee because Officer Cramer caught him by grabbing his shirt and appellant did not actually get away from the officers. We disagree. Here, from the video the jury saw that appellant failed to stop running when Officer Cramer was attempting to handcuff him and that appellant continued to run even when Officer Cramer attempted to stop him by grabbing his shirt. The jury heard the evidence from both officers that appellant fled when he ran away from them. Appellant cites, and we have found, no authority supporting a conclusion that a person is not fleeing because the officer catches him while he is running away. Therefore, viewing the evidence in the light most favorable to the prosecution, we conclude that a rational jury could have found that appellant fled from Officer Cramer; thus, the evidence is sufficient to support the conviction. We overrule appellant's sole issue.

IV. CONCLUSION

We affirm the trial court's judgment.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
15th day of February, 2018.